



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FTI/167334

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 16, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on August 05, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly implemented a tax intercept.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

|  
|

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Simone Johnson

Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Corinne Balter

Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On February 2, 2015 the agency sent the petitioner a notice stating that he was overpaid \$7,939.00 in FoodShare (FS) benefits under claim number [REDACTED] for the period from January 1, 2013 to December 31, 2013.

3. On February 4, 2015 the agency sent the petitioner a notice stating that he was overpaid \$4,108.00 in FS benefits under claim number [REDACTED] for the period from January 1, 2014 through June 30, 2014.
4. On February 4, 2015 the agency sent the petitioner a notice stating that he was overpaid \$702.00 in FS benefits under claim number [REDACTED] for the period from July 1, 2014 to July 31, 2014.
5. On February 4, 2015 the agency sent the petitioner a notice stating that he was overpaid \$3,021.00 in FS benefits under claim number [REDACTED] for the period from August 1, 2014 to December 31, 2014.
6. On February 4, 2015 the agency sent the petitioner a notice stating that he was overpaid \$1,616.00 in FS benefits for the period from January 1, 2015 to February 28, 2015.
7. Every notice stated that the petitioner had 90 days to appeal the overpayment.
8. On March 3, 2015 the agency sent the petitioner a Repayment agreement.
9. On April 2, 2015, May 4, 2015, and June 2, 2015 the agency sent the petitioner Dunning Notices reminding him of the overpayments that were still due.
10. On July 17, 2015 the agency sent the petitioner a notice of tax intercept indicating that it may intercept any tax refund to which he might be entitled to satisfy the \$16,802.00 balance of the \$17,386.00 overpayment of FoodShare benefits.
11. On July 16, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

### **DISCUSSION**

The State is required to recover all FoodShare overpayments. An overpayment occurs when a FoodShare household receives more FoodShare than it is entitled to receive. 7 C.F.R. §273.18(a). The Federal FoodShare regulations provide that the agency shall establish a claim against a FoodShare household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2).

A Notification of FoodShare Overissuance, a FoodShare Overissuance Worksheet and a repayment agreement must be issued to the household/recipient. *FoodShare Wisconsin Handbook*, §7.3.1.8. If the recipient does not make a payment or misses a payment, a dunning notice must be issued. *Id.*

The State of Wisconsin Public Assistance Collections Unit uses tax intercept from both state and federal tax refunds to recover overpayments from anyone who has become delinquent in repayment of an overissuance.

To use tax intercept, the person must have received three or more dunning notices and the debt must be:

1. Valid and legally enforceable.
2. State: All error types  
Federal: All error types.
3. State: At least \$20;  
Federal: At least \$25.
4. State: At least 30 days from notification of Overissuance;  
Federal: Not more than 10 years past due from notification date except in fraud cases. There is no delinquency period for fraud.
5. Free from any current appeals.
6. Incurred by someone who has not filed bankruptcy, nor has their spouse.

*FoodShare Wisconsin Handbook §7.3.2.10 Tax Intercept*

Wis. Stat., §49.85, provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayment of general relief benefits, overissuance of FS, overpayment of AFDC and Medical Assistance payments made incorrectly.

The Department of Health Services must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. *Id.* at §49.85(3).

The hearing right is described in Wis. Stat., §49.85(4)(b), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... **may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.**

*Emphasis added*

A party has 30-days from the date of the letter/notice of tax intercept to file an appeal. Wis. Stat., §49.85(3)(a)2; FSH §7.3.2.11 In this case, the petitioner's appeal is timely with regard to the tax intercept issue.

At a hearing concerning the use of a tax intercept to collect a FoodShare Overissuance, appeal of the determination of FoodShare overissuance is not allowed, pursuant to Wis. Stat., §49.85(4)(b), because the petitioner had a prior right to appeal the determination. The hearing is specifically limited to the tax intercept and whether or not the State agency correctly used the tax intercept. *Id.*

In this case the petitioner sought to challenge the underlying overpayment. The agency argues that the petitioner was living in the home. The petitioner argues that he was separated from his wife, and not living in the home. There were five overpayment notices mailed to the petitioner between February 2, 2015 and February 4, 2015. The petitioner did not request a hearing until July 16, 2015. This is well beyond the statutory time limit to challenge the underlining overpayment.

There is no dispute that the use of tax intercept was proper in this case. The petitioner received three or more dunning notices, the debt was valid and legally enforceable, the debt was over both the State and federal threshold amount for a tax intercept, the debt is within State and Federal time limits for collecting, is free from any appeal, and the petitioner has not filed for bankruptcy.

### **CONCLUSIONS OF LAW**

The agency correctly implemented a tax intercept.

**THEREFORE, it is**

**ORDERED**

That the case is dismissed.

## REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

## APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 25th day of August, 2015

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\sCorinne Balter  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on August 25, 2015.

Milwaukee Enrollment Services  
Public Assistance Collection Unit